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Attorneys for Defendant
ANTHONY BURKE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
(HONORABLE WM. FREMMING NIELSEN)

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	CR-06-113-WFN
)	
Vs.)	Defendant's Sentencing
)	Memorandum
ANTHONY BURKE,)	
)	
Defendant.)	
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TO: JAMES McDEVITT, UNITED STATES ATTORNEY
JOSEPH H. HARRINGTON, ASSISTANT UNITED STATES ATTORNEY

ANTHONY BURKE, through counsel, Christina L. Hunt for the
Federal Defenders of Eastern Washington and Idaho, hereby files
this his sentencing memorandum in the above-styled case.

Mr. Burke has pled guilty to one count of possession of
ammunition by a person previously committed to a mental
institution, 18 U.S.C. §922(g)(4). The maximum penalty for this
offense is 10 years imprisonment, 3 years of supervised release,
\$250,000 fine and \$100 mandatory special assessment.

The presentence report prepared in this matter suggests that
the appropriate criminal history is category I, the adjusted
offense level is 15, with a resulting advisory guideline range of

1 18-24 months.¹ The government has suggested that the appropriate
2 sentence in this case would be the statutory maximum sentence of
3 ten years. This recommendation was based upon the government's
4 assertion that Mr. Burke has denied any mental health issues, has
5 not complied with medication regimes, and has shown an escalation
6 of planning assaultive behavior. (See United States Response to
7 the Presentence Investigation Report and Sentencing Memorandum,
8 filed April 24, 2007). As part of their recommendation, the
9 government relies on information received from Eastern State
10 Hospital, specifically comments made during the course of an in-
11 patient forensic hospitalization during 2006. Since the date of
12 that hospitalization, Mr. Garver has had two subsequent forensic
13 evaluations at Sea-Tac Federal Correctional Institution in June
14 2007 and the Rochester Federal Medical Center in November 2007.
15 The government has not referenced those reports as part of their
16 sentencing recommendations.

17 The question which this court now faces is how does one
18 fashion a sentence which not only incorporates punishment and
19 protects others, but a sentence which also rehabilitates Mr.
20 Garver? It appears that this question, in part, requires the
21 court to address all of the factors set forth in 18 U.S.C.
22 §3553(a) without over-emphasizing one factor to the exclusion of

23 ¹Mr. Burke has filed an earlier objection to the adjusted
24 offense total. Mr. Burke contends the appropriate adjusted offense
25 level is 12, with a resulting advisory guideline range of 10-16
26 months.

1 the others. The government, on the other hand, urges this court
2 to emphasize §3553(a)(2)(C) to the exclusion of all other
3 factors.

4 When looking at the nature and circumstances of this
5 offense, the government ignores the fact that Mr. Burke was in
6 possession of bullets ALONE. No firearm was ever found, and, in
7 fact, Mr. Burke was not in possession of one at any time relevant
8 to this discussion. Mr. Burke indicates that he had purchased
9 the bullets, but not a firearm. Interestingly enough, had Mr.
10 Burke attempted to purchase a firearm, paperwork required by
11 federal law would have been filled out and a background check may
12 have been done. In doing so, Mr. Burke's inability to possess a
13 firearm would have probably resulted in a denial of his request
14 to purchase any firearm. In addition to the fact that Mr. Burke
15 possessed only ammunition, the court must also consider the
16 characteristics of Mr. Burke. It appears that Mr. Burke will
17 rule out mental health assistance unless that mental health
18 assistance is required of him. Given that both psychologists
19 from the Bureau of Prisons believe that he is not currently in
20 need to treatment, he will not receive assistance at a medical
21 facility maintained by the Bureau of Prisons. By placing Mr.
22 Burke in general population with inmates, some of whom are very
23 seasoned criminals, Mr. Burke will have the disadvantage of
24 having only seasoned criminals as role models. He has shown a
25 fascination with computers, electronics and chemistry, which may
26 be related to either his obsessive-compulsive behavior or to his

1 autism. He has further shown that his communication skills and
2 his need to impress others with exaggerated tales will further be
3 honed if he is exposed to other criminals.

4 It is clear that Mr. Burke needs to be in a structured
5 environment. This court must determine if that environment must
6 be a prison setting, or a setting which will enable Mr. Burke to
7 obtain mental health evaluations and counseling as well as to
8 learn skills he needs in order to cope with outside pressures in
9 a productive manner. He was subjected to severe abuse from his
10 stepfather while in the home, and then ejected from the home. He
11 often found himself homeless and lived in the woods as he had no
12 where else to go. He has been resistant to treatment in the past
13 as he has verbalized that he was only in treatment because of his
14 stepfather's and mother's lies.

15 Dr. Carlson, from FMC Rochester, stated that Mr. Burke
16 exhibited a generally positive behavioral adjustment while on the
17 outpatient evaluation unit. Although he sometimes needed
18 reminders about his personal hygiene, his mental state was calm
19 and controlled, and he functioned without difficulties.

20 It appears that if Mr. Burke were to be placed in a halfway
21 house or group home, he may be able to maintain the same type of
22 mental state that he maintained while at FMC Rochester. Another
23 advantage of releasing Mr. Burke into a halfway or group home
24 rather than imposing the maximum statutory sentence as requested
25 by the government is that this court will be able to use the
26 sanctions of supervised release if Mr. Burke does not comply. If
27

1 the maximum statutory sentence is imposed, supervised release
2 will have no meaning as it cannot be revoked.

3 Given the above, counsel below respectfully requests that
4 this court sentence Mr. Burke to time served, to be followed by
5 the maximum period of supervised release with the special
6 condition that Mr. Burke receive mental health treatment and
7 counseling as well as serve time in a halfway house or group
8 home.

9 Dated: January 23, 2008

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11 Respectfully Submitted,

12
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CERTIFICATE OF SERVICE

I hereby certify that on January 23, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following: JOSEPH H. HARRINGTON, Assistant United States Attorney.

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